
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Jean L. Senatus

Spring Valley, NY

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File Number: EB-04-NY-086

NAL/Acct. No: 200532380002

FRN: 0010 9802 90

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 8, 2004

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Jean L. Senatus apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating an unlicensed radio transmitter on the frequency 96.1 MHz. We conclude, pursuant to Section 503(b) of Act,² that Jean L. Senatus is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On April 2, 2004, the FCC New York Office received a complaint from an FCC licensed radio station of interference from an illegal broadcast station operating on the frequency 96.1 MHz in Spring Valley, New York. The licensed station operates on the frequency 96.3 MHz in New York, New York.

3. On April 7, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 96.1 MHz in Spring Valley, New York. The agent observed a radio broadcast on 96.1 MHz, and identified the source of the transmissions as an FM broadcasting antenna on an office building at 52 South Main Street, Spring Valley, New York 10977. The agent searched Commission databases and found no evidence of a Commission authorization for operation on 96.1 MHz in Spring Valley, New York.

4. On April 17, 2004, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 96.1 MHz in Spring Valley, New York. The agents again observed a radio station broadcasting on 96.1 MHz and determined that the station was operating from 52 South Main Street, Spring Valley, New York. The agents observed an FM broadcast antenna on the roof of the building, entered the building, and heard the audio being broadcast on 96.1 MHz coming from behind one of the doors on the second floor.

5. The agents knocked on the door and were allowed entry into the office space where the

¹47 U.S.C. § 301.

²47 U.S.C. § 503(b).

radio station was in operation and a group of five men was present. The office space was empty except for the radio transmitting equipment. Agents observed studio equipment, an RF power amplifier, and an antenna cable going into an FM transmitter. In response to questions from the agents about the operation of the radio station, one of the men, identified from a driver's license as Jean L. Senatus, assumed responsibility for operation of the station. Mr. Senatus also stated that he did not know the name of the lessee of the office space.

6. On April 21, 2004, the New York Office sent a Warning Letter, by First Class Mail and Certified Mail, Return Receipt Requested, to Jean L. Senatus for unlicensed operation on the frequency 96.1 MHz. On April 29, 2004, the New York Office received a reply to the Warning Letter from Jean L. Senatus. Mr. Senatus admitted to being present during the operation of the station. He stated, however, that he did not own the station and that he was not aware that a license was required to operate a radio station. Mr. Senatus further stated that station operations ceased immediately upon receipt of the warning letter from the FCC.

7. On May 3, 2004, a Commission agent spoke to the owner of 52 South Main Street, Spring Valley, New York, who identified Jean L. Senatus as the lessee of the second floor office space inspected by the agents. The building owner told the agent that he was aware of the antenna on the roof of his building, but that Mr. Senatus told him that the antenna on the roof was for a low power FM radio station. The lease agreement between Jean L. Senatus and the owner of 52 South Main Street, Spring Valley, New York, provides that Mr. Senatus was to occupy the office space on the second floor to conduct his business as a producer of a television show.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

9. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. As described above, agents determined that a radio station broadcasting on 96.1 MHz operated from 52 South Main Street in Spring Valley, New York on April 7, 2004 and April 17, 2004 without a license. When agents inspected the station during its operation on April 17, 2004, Mr. Senatus assumed responsibility for the station's operation. The fact that Mr. Senatus does not "own" the station is inapposite. Section 301 of the Act provides that "no person shall use or *operate*" radio transmission equipment without a valid Commission authorization. We do not need to find that an individual or entity owns the station in order to find that there has been a violation of Section 301 of the Act. We therefore find that Mr. Senatus willfully violated Section 301 of the Act by operating radio transmission equipment without a license on 96.1 MHz.

³Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

10. The assertion by Mr. Senatus that he did not know that he needed a license does not negate the willfulness of the violation. Section 312(f)(1) of the Act, 47 USC § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" Thus, even if Mr. Senatus did not intend to violate Section 301 of the Act, he acted willfully by deliberately operating the station. Similarly, the fact that Mr. Senatus ceased operations after receiving the Warning Letter is not a mitigating factor. The FCC expects that unlicensed radio station operations will cease immediately upon notification of a violation.

11. Based on the evidence before us, we find that Jean L. Senatus willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on 96.1 MHz on April 7, 2004, and April 17, 2004, without a Commission authorization.

12. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Jean L. Senatus is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.⁷

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Jean L. Senatus **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Jean Senatus, 103 W. Eckerson Road, Spring Valley, NY 10977.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau

⁸See 47 C.F.R. § 1.1914.